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2. CAPTA

2.1 CAPTA, Assurances and Requirements

1 Q: Must the policies that are the subject of the CAPTA assurances, be embodied in State statutes?

A: There are only four assurances in the CAPTA amendments of 1996 that require provisions in State law. Those are: Provisions for immunity from prosecution under State and local laws and regulations for individuals making good faith reports of suspected or known instances of child abuse or neglect (section 106 (b)(2)(A)(iv)); Upon implementation of provisions, procedures or mechanisms to assure that the State does not require reunification of a surviving child with a parent who has committed certain felonies, that conviction of any one of those felonies constitute grounds under State law for the termination of parental rights of the convicted parent as to the surviving children (section 106 (b)(2)(xiii)); Authority under State law for the State CPS system to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, as may be necessary to prevent the withholding of medically indicated treatment from disabled infants with life-threatening conditions (section 106 (b)(2)(B)(iii)); and authority under State law to permit the CPS system of the State to pursue any legal remedies, including the authority to initiate legal proceedings in a court of competent jurisdiction, to provide medical care or treatment for a child when such care or treatment is necessary to prevent or remedy serious harm to the child, or to prevent the withholding of medically indicated treatments from disabled infants with life-treating conditions (section 113).

However, if a State has a law in effect which conflicts with the provisions in any assurance, or the State's statutory definitions of "child abuse and neglect" and "sexual abuse" do not meet the minimum standards in sections 111 (2) and 111 (4) of CAPTA, it must modify its statute to correspond with the CAPTA requirements.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97)ACYF-NCCAN-PIQ-97-01 (3/4/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106, 111 and 113

2 Q: Does the Administration on Children, Youth and Families (ACYF) intend to do in-depth reviews of State statutes and policies to determine State eligibility under the CAPTA Amendments of 1996?

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- A:** CAPTA, as amended in 1996, made a shift from eligibility requirements to submission of a State plan with assurances in the form of certifications by the State's Chief Executive Officer that certain provisions, procedures, or programs are in place in the State. Legislative history confirms that it was Congressional intent to simplify and streamline the administration of CAPTA at the Federal, State and local levels (Congressional Record - House, September 25, 1996, p. H11148). Accordingly, the primary responsibility for review of State statutes and policies rests with the States.

If there are instances in which ACYF is presented with evidence of potential deficiencies (e.g., through the new child and family services program reviews being conducted by the Children's Bureau, or other sources), action will be taken to verify whether a problem actually exists. If a deficiency is verified, the State will be notified in writing and will be required to take corrective action within a specified timeframe. Funds will not be jeopardized unless the State fails to correct the deficiency within the specified timeframe.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97)ACYF-NCCAN-PIQ-97-01 (3/4/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.)

2.1A CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information

No questions and answers are available at this time.

2.1A.1 CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Confidentiality

- 1 Q:** What are the CAPTA confidentiality requirements?

- A:** The CAPTA Amendments of 1996 require that States preserve the confidentiality of all reports and records on child abuse and neglect in order to protect the privacy rights of the child and the child's parents or guardians, except in certain limited circumstances. CAPTA prohibits disclosure of confidential child abuse and neglect information to persons or entities outside those enumerated in the statute. Authorized recipients of confidential child abuse and neglect information are bound by the same confidentiality restrictions as the child protective services agency. Thus, recipients of such information must use the information only for activities related to the prevention and treatment of child abuse and neglect.

The only exception to the restrictions on disclosure of otherwise confidential child abuse and

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neglect information is in cases of child abuse or neglect that result in the death or near death of a child. In such cases, CAPTA requires public disclosure of the findings and information about the case.

Source: ACYF-NCCAN-PIQ-98-01 (6/29/98)ACYF-NCCAN-PIQ-98-01 (6/29/98)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106 (b)(2)(A)(v) and (vi)

2 Q: Would legislation which protects the identity of the reporter, but would otherwise open child abuse and neglect reports and records to the public, meet the confidentiality provisions in section 106 (b)(2)(v) of CAPTA?

A: No. The CAPTA Amendments of 1996 require that States preserve the confidentiality of all records in order to protect the rights of the child and the child's parents or guardians, except in certain circumstances. The statute specifies the persons to whom and circumstances in which disclosure of CPS records can be made. In addition, it allows States to release CPS records to entities or classes of individuals statutorily authorized by the State to receive such information pursuant to a legitimate State interest.

The CAPTA language strikes a delicate balance between protecting the privacy rights of individuals and the release of CPS records when there is a legitimate State purpose for the disclosure. In creating this balance, it is clear that the Congress did not intend that all records be made public.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97)ACYF-NCCAN-PIQ-97-01 (3/4/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

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3 **Q:** Do States have the authority to release otherwise confidential child abuse and neglect information to researchers for the purpose of child abuse and neglect research?

A: Yes. Under the CAPTA amendments, States have authority to release information to researchers of child abuse and neglect in either of two ways: (1) the CPS agency may contract with a researcher, thereby making the researcher its "agent"; or (2) States may statutorily authorize release of such information to researchers as a legitimate State purpose, since research involving data in CPS records can provide important information that will help government officials plan programs for abused and neglected children and develop future policy directions.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97)ACYF-NCCAN-PIQ-97-01 (3/4/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

4 **Q:** The confidentiality provision at section 106 (b)(2)(A)(v) of CAPTA requires that States have a State law or operate a Statewide program that includes methods to preserve the confidentiality of all child abuse and neglect records except in certain circumstances. The statutory language states that such records, "shall only be made available to" a specified list of persons and entities. Under the CAPTA Amendments of 1996 are States required to disclose child abuse and neglect records to the persons and entities enumerated in subsections (I)-(VI) under section (v)?

A: No. The language prohibits State disclosure of confidential child abuse and neglect information to persons or entities outside the enumerated categories, and permits, rather than requires, such disclosure to those included in the specified categories.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97)ACYF-NCCAN-PIQ-97-03 (9/26/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

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5 *Q:* Is there a prohibition against redisclosure of confidential child abuse and neglect information?

A: Yes. Authorized recipients of otherwise confidential child protective services (CPS) information are bound by the same confidentiality restrictions as the CPS agency. Thus, recipients of such information must use the information only for activities related to the prevention and treatment of child abuse and neglect. Further disclosure is permitted only in accordance with the CAPTA standards.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97)ACYF-NCCAN-PIQ-97-03 (9/26/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

6 *Q:* Will States compromise compliance with titles IV-B and IV-E of the Social Security Act if they comply with the confidentiality requirements in sections 106 (b)(2)(v) and (vi) of CAPTA?

A: Title IV-E requires that States provide safeguards restricting the use and/or disclosure of information regarding children served by title IV-E foster care. Records maintained under both title IV-E and IV-B (both of which are subject to the Department's confidentiality provisions in 45 CFR 205.50) are to be safeguarded against unauthorized disclosure. The regulation at 45 CFR 205.50 states that the release or use of information concerning individuals applying for or receiving financial assistance is restricted to certain persons or agencies that require it for specified purposes. Such recipients of information are in turn subject to standards of confidentiality comparable to those of the agency administering the financial assistance programs.

There may be instances where CPS information is subject both to disclosure requirements under CAPTA and to the confidentiality requirements under title IV-E and 45 CFR 205.50. To the extent that the CAPTA provisions require disclosure (such as in section 106 (b)(2)(A)(vi), the CAPTA disclosure provision would prevail in the event of a conflict since the CAPTA confidentiality provisions were most recently enacted. Whereas the CAPTA provision is permissive (such as in sections 106 (b)(2)(A)(v)(I)-(VI)), it allows States to disclose such information without violating CAPTA, but it does not make such disclosure permissible in other programs if it is not otherwise allowed under the other program's governing statute or regulations.

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Source: ACYF-NCCAN-PIQ-97-03 (9/26/97)ACYF-NCCAN-PIQ-97-03 (9/26/97)

Reference: Social Security Act - section 471 (a)(8); Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106; 45 CFR 205.50, 45 CFR 1355.21 (a)

7 Q: Do the confidentiality requirements in the Child Abuse Prevention and Treatment Act apply to the members of citizen review panels?

A: Citizen review panel members are bound by the confidentiality restrictions in section 106 (c)(4)(B)(i) of CAPTA. Specifically, members and staff of a panel may not disclose identifying information about any specific child protection case to any person or government official, and may not make public other information unless authorized by State statute to do so. Further, section 106 (c)(4)(B)(ii) of CAPTA requires States to establish civil sanctions for violations of these confidentiality restrictions. States that have civil sanctions in place for breaches of confidentiality need not enact new legislation, so long as their existing provisions encompass the CAPTA requirements.

Source: ACYF-CB-PI-98-01 (1/7/98)ACYF-CB-PI-98-01 (1/7/98)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106106 (b)(2)(A)(x) and (c)

2.1A.2 CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Expungement

1 Q: How will States be able to determine whether a pattern of abuse or neglect exists if unsubstantiated records must be expunged? While the statute allows these records to be kept in casework files, if the files are not maintained in a central location, previous unsubstantiated report(s) may go undetected if a subsequent report comes into another office, or even another worker.

A: The impetus behind the expungement requirement was the concern of Congress that families are negatively and sometimes unjustly affected by maintenance of public records of unsubstantiated allegations of abuse or neglect. However, it was not the intent of Congress to prevent CPS agencies from keeping information on unsubstantiated reports for use in future risk and safety assessments (Senate Report 104-117, dated July 10, 1995, p. 14). While CAPTA requires prompt expungement of records that are accessible to the general public or are used for purposes of employment or other background checks in cases determined to be

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unsubstantiated, they also allow CPS agencies to retain information on unsubstantiated reports in their casework files.

Since the issue for Congress is disclosure of information regarding cases that are unsubstantiated or unfounded, this requirement should not adversely affect a State's ability to determine possible cumulative harm. For instance, a State could choose to implement a system which would consider an unsubstantiated case "expunged" for any purpose other than investigation of a new report. This should be possible even in States where casework files are computerized.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97)ACYF-NCCAN-PIQ-97-01 (3/4/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

2 Q: How does the CAPTA expungement requirement affect States that have a three-tier system which includes a middle category that indicates a reasonable basis for concern?

A: This requirement relates only to unsubstantiated or unfounded cases and would not affect retention of records for a middle category which indicates that there is reason to suspect that child abuse or neglect has occurred.

Source: ACYF-NCCAN-PIQ 97-01 (3/4/97)ACYF-NCCAN-PIQ 97-01 (3/4/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

2.1A.3 CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Open courts

1 Q: Would there be a conflict with the CAPTA confidentiality requirements if a State chooses to open proceedings relating to child abuse and neglect to the public?

A: Juvenile courts were set up separately from adult court proceedings in order to have non-criminal civil proceedings that would create an environment to assist in family problem-solving while protecting the privacy rights of the child and family. The opening of these proceedings would not in itself be in conflict with the statute in that the statute requires confidentiality for "reports and records". However, to the extent that the proceedings involve CPS reports and

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records which are otherwise confidential, there would be a conflict unless there are provisions to maintain the confidentiality of these records vis-a-vis the public.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97)ACYF-NCCAN-PIQ-97-01 (3/4/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

2 Q: Some States have enacted laws that allow open courts for juvenile protection proceedings, including child in need of protection or services hearings, termination of parental rights hearings, long-term foster care hearings and in courts where dependency petitions are heard. Questions have arisen about whether courts that are open to the public and allow a verbal exchange of confidential information meet the confidentiality requirements under CAPTA. Do the confidentiality provisions in CAPTA restrict the information that can be discussed in open court?

A: Yes. The purpose of the confidentiality provision is to protect the privacy rights of individuals receiving services or assistance under this program and to assure that confidential information is not disclosed to unauthorized recipients. Although, under CAPTA, confidential information may be shared with the courts, there is no provision which allows for public disclosure of such information except in cases of child abuse or neglect that result in the death or near death of a child. The confidentiality requirements of CAPTA do not prohibit open courts per se. However, to the extent that the proceedings involve discussion of confidential information from the child abuse and neglect report and record, the confidentiality requirements apply. Accordingly, such information cannot be discussed in a public forum, including an open court. To the extent that confidential information is relevant to the proceedings, it must be discussed in the court's chambers or some other restricted setting, and the pertinent sections of the transcript must be kept confidential as well.

Violation of the Federal confidentiality provisions is a State plan compliance issue under CAPTA.

Source: ACYF-CB-PIQ-98-01 (6/29/98)ACYF-CB-PIQ-98-01 (6/29/98)

Reference: Social Security Act - section 471 (a)(8); Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106; 45 CFR 205.50; 45 CFR 1355.21 (a)

2.1A.4 CAPTA, Assurances and Requirements, Access to Child Abuse and Neglect Information, Public disclosure

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1 Q: The CAPTA amendments at section 106 (b)(2)(vi) require States to provide for the public disclosure of findings or information about a case of child abuse or neglect which results in a child fatality or near fatality. For the purposes of this requirement, what is considered a "near fatality"?

A: A "near fatality" is defined under section 106 (b)(4)(A) as "...an act that, as certified by a physician, places the child in serious or critical condition." For example, if hospital records reflect that the child's condition is "serious" or "critical", this would be considered a "near fatality" under CAPTA.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97)ACYF-NCCAN-PIQ-97-01 (3/4/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

2 Q: The requirement for public disclosure states that "findings or information" about a case must be disclosed. Does this mean that States have the option to disclose either the findings of the case, or information which may be general in nature and address such things as practice issues rather than provide case-specific information?

A: No. The intent of this provision was to assure that the public is informed about cases of child abuse or neglect which result in the death or near death of a child. As with the use of the other "or's" in this provision ("child abuse or neglect" and "child fatality or near fatality"), we understand the language to be inclusive and not limiting.

Specifically, the reference to "findings or information" requires the disclosure of information about such a case even if there are no findings. Thus, when child abuse or neglect results in the death or near death of a child, the State must provide for the disclosure of the available facts. However, nothing in this provision should be interpreted to require disclosure of information which would jeopardize a criminal investigation or proceeding.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97)ACYF-NCCAN-PIQ-97-01 (3/4/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

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- 3 **Q:** One State has child fatality review panels that are charged with the review and evaluation of child fatalities and near fatalities in the State. In this process, they evaluate the extent to which the agency is effectively discharging its child protection responsibilities. The child fatality review panels publish an annual report that includes information, findings and recommendations on each case, and this report is made public. Would this process meet the requirement in section 106 (b)(2)(vi) for public disclosure of findings or information about cases of child abuse or neglect that result in child fatality or near fatality?

A: Yes. This process allows for public disclosure in such cases and would meet the CAPTA requirement.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97)ACYF-NCCAN-PIQ-97-03 (9/26/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

2.1B CAPTA, Assurances and Requirements, Appeals

- 1 **Q:** Please explain the requirements in the Child Abuse Prevention and Treatment Act (CAPTA) for appealing findings of child abuse or neglect.

A: By October 3, 1998, States were required to have in place an appeals process by which an individual who is officially found to have committed child abuse or neglect can appeal such a finding. States have some flexibility in determining the type of appeals process that best meets their needs. For example, the appeals process can be established through the courts, through some other external appeals process, or through an internal appeals process.

The appeals process, however, must meet the following minimum conditions in order to satisfy the CAPTA requirements:

- 1) The process must afford the individual with a finding of child abuse or neglect an opportunity for due process.
- 2) The office or individual(s) hearing such appeals cannot be involved in any other stage of the case.
- 3) The office or individual(s) established to hear such appeals must have the authority to overturn a previous finding of child abuse or neglect.

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4) Individuals must be given written notification of their right to appeal, and the method by which they may appeal, at the time they are notified of the official finding of child abuse or neglect.

Source: ACYF-CB-PI-98-08 (6/29/98)ACYF-CB-PI-98-08 (6/29/98)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106 (b)(2)(A)(xi)(II)

2 Q: To whom does the appeals process under section 106 (b)(2)(xi)(II) apply?

A: CAPTA requires States to establish provisions, procedures and mechanisms by which individuals who disagree with an official finding of abuse and neglect can appeal such finding. We understand this provision to apply to the perpetrator; however, individuals with standing under State law are not precluded from participating in the appeals process should such individuals disagree with a finding of abuse or neglect.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97)ACYF-NCCAN-PIQ-97-03 (9/26/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

3 Q: The Department has stated that an appeals process under CAPTA should include steps to assure that individuals with appeal rights receive timely notification of the right to appeal a finding of child abuse and neglect. What is considered timely notification (e.g., at the time individuals come to the attention of the agency or after the finding of abuse and/or neglect)?

A: While there is nothing in Federal statute or regulation which defines "timely notification" for this purpose, we believe that the term is directly related to an official finding of abuse or neglect. Therefore, States should implement processes and procedures to assure that individuals are notified of their right to appeal upon a final finding of abuse or neglect.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97)ACYF-NCCAN-PIQ-97-03 (9/26/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

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4 Q: Must States set up an administrative appeals process if they do not maintain a central registry?

A: Yes. Pursuant to section 106 (b)(2)(xi)(II) of CAPTA, States had to have had an appeals process in place by October 3, 1998, to hear appeals from individuals who disagree with an official finding of child abuse or neglect. There is nothing in the statutory language or legislative history that indicates that this requirement is limited to only those States with central registries. Additionally, in order for an appeals process to be complete, it should include steps to assure that individuals with such rights receive timely notification.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97)ACYF-NCCAN-PIQ-97-01 (3/4/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

2.1C CAPTA, Assurances and Requirements, Expedited Termination of Parental Rights

1 Q: The provision at section 106 (b)(2)(xi)(I) of CAPTA requires that States provide for expedited termination of parental rights for abandoned infants. What is considered "expedited" for this purpose?

A: The intent of this provision was to assure that infants who have been abandoned by their parents do not end up in "foster care limbo" (Congressional Record - House, September 25, 1996, p. H11148). To meet this requirement, States are expected to establish procedures to assure that termination of parental rights for abandoned infants is handled more expeditiously than terminations would normally be handled in the State. One approach might be to prescribe a specific period of time by which a termination must be initiated for abandoned infants. The American Bar Association's Center on Children and the Law published a monograph in 1996 entitled, "Early Termination of Parental Rights: Developing Appropriate Statutory Grounds", which may be of assistance to States as they implement this provision of CAPTA.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97)ACYF-NCCAN-PIQ-97-01 (3/4/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

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2.1D CAPTA, Assurances and Requirements, Guardian Ad Litem

1 Q: What is the meaning of the requirement in section 106 (b)(2)(ix) of CAPTA for guardians ad litem, including the requirement that they obtain a first-hand understanding of the situation and needs of the child?

A: In order to provide States with more flexibility in appointing a guardian ad litem, the CAPTA clarifies that such guardian does not have to be an attorney, but also may be a court-appointed special advocate (CASA). The Congress noted that, under the current system, there are more and more cases where an appointed guardian ad litem has no contact with the child and makes uninformed recommendations to the court. Therefore, language was added to clarify that the role of such individuals include obtaining a first-hand understanding of the situation in order to make an informed recommendation to the court (Congressional Record - House, September 25, 1996, p. H11149).

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97)ACYF-NCCAN-PIQ-97-01 (3/4/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

2.1E CAPTA, Assurances and Requirements, Reunification

1 Q: If a State does not "require" reunification, in general, must it do anything further regarding the mandate in section 106 (b)(2)(xii) which requires that provisions, procedures, and mechanisms be implemented to assure that the State does not require reunification with a parent who has been convicted of murder, manslaughter or felonious assault of a child?

A: Yes. To comply with this section of CAPTA, States must have provisions, procedures, and mechanisms in place which address the fact that reunification is not required.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97)ACYF-NCCAN-PIQ-97-01 (3/4/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

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- 2 **Q:** Section 106 (b)(2)(xii) of CAPTA requires that provisions, procedures, and mechanisms be implemented to assure that a State does not require reunification with a parent who has been convicted of certain felonious acts. On the other hand, the Indian Child Welfare Act (ICWA) requires that "any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have been unsuccessful" (section 102 (d)). Does a conflict exist between the two statutes?

A: No. There is no conflict between the CAPTA provision and the ICWA requirement noted above. The CAPTA provision does not prohibit States from making reasonable efforts to reunify families as required under ICWA (as well as under title IV-E); it merely ensures that States not require reunification under certain circumstances. Therefore, it does not conflict with the ICWA requirement regarding efforts to prevent the breakup of Indian families.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97)ACYF-NCCAN-PIQ-97-03 (9/26/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106; Indian Child Welfare Act

- 3 **Q:** Does section 106 (b)(2) (xiii) of CAPTA, which requires States to have provisions for termination of parental rights in cases where a parent has been convicted of murder, manslaughter or felonious assault of a child, mean that children cannot be reunified with a parent that has committed such a crime?

A: No. This provision is not a prohibition against reunification, but rather assures that reunification is not required in such cases. The decision as to whether to reunify or seek termination of parental rights is within the sole discretion of the State and is determined on a case-by-case basis.

Source: ACYF-NCCAN-PIQ 97-01 (3/4/97)ACYF-NCCAN-PIQ 97-01 (3/4/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

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2.2 CAPTA, Citizen Review Panels

1 Q: How will States know how many citizen review panels they will be required to establish to meet the requirements of section 106 (c)(1)(A)-(B) since that number is dependent upon the amount of funds received by the State under the Community-Based Family Resource and Support (CBFRS) Program?

A: CAPTA requires that States establish a minimum of three citizen review panels. The only exception to this requirement is for States that receive the minimum allotment of \$175,000 under the CBFRS Program, and they are required to establish no less than one citizen review panel.

The Department has notified States in writing regarding whether one or three panels will be required in each State.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97)ACYF-NCCAN-PIQ-97-01 (3/4/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

2 Q: Do States have the flexibility to determine how to implement the citizen review panels requirement in section 106 (b)(2)(x) of CAPTA?

A: Yes. States have the flexibility to implement the citizen review panel requirement in ways that best meet their needs, so long as the panels meet the requirements set forth under section 106 (c) of CAPTA.

States should pay particular note to section 106 (c)(2) of CAPTA which specifies the requirements for membership of the panel. We encourage the States to give special attention to the qualifications of the panelists to review complex cases of child maltreatment, including a balance among children's attorneys, child advocates and CASA volunteers who are familiar with the difficulties of the child protection system.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97)ACYF-NCCAN-PIQ-97-01 (3/4/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

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3 **Q:** What are the functions that citizen review panels must perform?

A: Pursuant to sections 106 (c)(4)(A)(i) and (ii) of CAPTA, each panel must evaluate the extent to which the State is fulfilling its child protection responsibilities in accordance with its CAPTA State plan by: (1) examining the policies and procedures of State and local agencies, and (2) reviewing specific cases, where appropriate. In addition, consistent with section 106 (c)(4)(A)(iii) of CAPTA, a panel may review other criteria that it considers important to ensure the protection of children, including the extent to which the State CPS system is coordinated with the title IV-E foster care and adoption assistance programs of the Social Security Act, and the child fatalities and near fatalities in the State.

Source: ACYF-CB-PI-99-09 (6/2/99)ACYF-CB-PI-99-09 (6/2/99)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

4 **Q:** Section 106 (c)(5) of CAPTA requires States to provide citizen review panels with access to information on cases that the panel wants to review "if such information is necessary for the panel to carry out its functions". Who determines what confidential information is necessary for these functions?

A: The Congress intended that citizen review panels be established to evaluate the extent to which States are meeting the goals of protecting children and their responsibilities related to the State plan. In carrying out these responsibilities, it is important for the review panels to have access to confidential information, as necessary, to assist in their duties. The intent of section 106 (c)(5) was to direct States to provide the review panels with information that the panel determines is necessary to carry out these functions (Congressional Record - House, September 25, 1996, p. H11149).

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97)ACYF-NCCAN-PIQ-97-01 (3/4/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106

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5 Q: Do the confidentiality requirements in the Child Abuse Prevention and Treatment Act apply to the members of citizen review panels?

A: Citizen review panel members are bound by the confidentiality restrictions in section 106 (c)(4)(B)(i) of CAPTA. Specifically, members and staff of a panel may not disclose identifying information about any specific child protection case to any person or government official, and may not make public other information unless authorized by State statute to do so. Further, section 106 (c)(4)(B)(ii) of CAPTA requires States to establish civil sanctions for violations of these confidentiality restrictions. States that already have civil sanctions in place for breaches of confidentiality need not enact new legislation, so long as their existing provisions encompass the CAPTA requirements.

Source: ACYF-BC-PI-98-01 (1/7/98)ACYF-BC-PI-98-01 (1/7/98)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106106 (b)(2)(A)(x) and (c)

2.3 CAPTA, Definitions

1 Q: We find the "rape" and "statutory rape" language in the definition of sexual abuse found at section 111 (4)(B) of CAPTA confusing, especially within the context of the general definition of child abuse and neglect at section 111 (2). Please clarify.

A: The provision at section 111 (2) defines child abuse and neglect as "at a minimum, any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse or exploitation, or an act or failure to act which presents an imminent risk of serious harm." Section 111 (4)(B) goes on to say that the term sexual abuse includes "the rape, and in the cases of caretaker or inter-familial relationships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children." We understand section 111 (4)(B) to define the circumstances in which a parent or caretaker, although not the perpetrator, is chargeable with child abuse and neglect because of sexual acts committed by a third party.

For the purposes of CAPTA, child abuse and neglect, by definition, is limited to a recent act or failure to act on the part of a parent or caretaker. Thus, if a child is raped due to a failure to act on the part of a parent or caretaker, such failure to act would be considered child abuse by the parent or caretaker under CAPTA, regardless of the identity of the perpetrator. In addition, the

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definition at section 111 (4)(B) means that action or failure to act by a parent or caretaker that results in statutory rape by another caretaker or family member is considered to be sexual abuse.

Source: ACYF-NCCAN-PIQ-97-03 (9/26/97)ACYF-NCCAN-PIQ-97-03 (9/26/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 111

2 Q: Definitions are found in sections 106 (b)(4), as well as in sections 111 (2) and (4). What is the difference between the definitions found in these sections?

A: The differences in the definitions found in these two sections is in what they govern. The definitions of "near fatality" and "serious bodily injury" in sections 106 (b)(4) of CAPTA refer to those specific terms as used in subsection (b) of section 106 of CAPTA. For instance, whenever the terms "near fatality" or "serious bodily injury" are used in subsection (b), the definitions found in section 106 (b)(4) would apply.

The definitions in section 111 (2) and (4), on the other hand, provide the minimum standards for the broader definitions of "child abuse and neglect" and "sexual abuse" which are used for all other purposes of Title I.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97)ACYF-NCCAN-PIQ-97-01 (3/4/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - sections 106 and 111

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3 **Q:** The CAPTA amendments at section 106 (b)(2)(vi) require States to provide for the public disclosure of findings or information about a case of child abuse or neglect which results in a child fatality or near fatality. For the purposes of this requirement, what is considered a "near fatality"?

A: A "near fatality" is defined under section 106 (b)(4)(A) as "...an act that, as certified by a physician, places the child in serious or critical condition." For example, if hospital records reflect that the child's condition is "serious" or "critical", this would be considered a "near fatality" under CAPTA.

Source: ACYF-NCCAN-PIQ-97-01 (3/4/97)ACYF-NCCAN-PIQ-97-01 (3/4/97)

Reference: Child Abuse Prevention and Treatment Act (CAPTA), as amended (42 U.S.C. 5101 et seq.) - section 106